

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SALVATORE PENNACCHIO, individually;
SALVATORE PENNACCHIO, on behalf of OLD
WORLD BREWING COMPANY, INC.,
derivatively; and SALVATORE PENNACCHIO, on
behalf of YANKEE BREWING COMPANY,
LLC, derivatively,

JUDGMENT & ORDER
05-CV-0985 (RRM)(RML)

Plaintiff,

- against -

ROBERT S. POWERS, STEPHEN C. DEMARIA,
STEVEN A. SEGAL, STEPHEN PERILLO,
MULTIMEDIA DISTRIBUTING, LLC, and
Certain as Yet Unnamed Defendants A-J,

Defendants.

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MAUSKOPF, United States District Judge.

By Order dated March 31, 2010, this Court referred the following motions for report and recommendation: (1) plaintiff's motion for default judgment against defendants Stephen C. DeMaria and Stephen Perillo, (2) DeMaria's motion to vacate the entry of default, and (3) DeMaria's motion to dismiss the complaint on ground that it is subject to an arbitration agreement. On August 9, 2010, Magistrate Judge Levy issued a Report and Recommendation (the "R&R") recommending that: (1) plaintiff's motion for a default judgment be denied with respect to DeMaria and granted with respect to Perillo; (2) DeMaria's motion to set aside the entry of default be granted; (3) DeMaria's motion to dismiss the complaint and compel arbitration be denied without prejudice; and (4) plaintiff be awarded the costs of the motion. Magistrate Judge Levy reminded the parties that, pursuant to Rule 72(b), any objection to the R&R was due within fourteen days. No party filed any objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, the Court has reviewed the R&R for clear error and, finding none, concurs with the R&R in its entirety. *See Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007). Accordingly, the Clerk of Court is respectfully directed to: (1) VACATE the March 12, 2008 default entered against Defendant Stephen C. DeMaria; (2) enter DEFAULT JUDGMENT against Defendant Stephen Perillo, with the issues of damages to be determined by inquest before Magistrate Judge Levy.

In further accordance with the R&R, costs attributable to the delay in defending this action from October 2008 are hereby awarded in favor of Plaintiff and against DeMaria. The determination of costs is respectfully referred to Magistrate Judge Levy, and DeMaria's motion to compel arbitration is DENIED without prejudice.

This matter is recommitted to Magistrate Judge Levy for further proceedings consistent with this Order, and for all remaining pre-trial issues.

SO ORDERED.

Dated: Brooklyn, New York
September 20, 2010

s/RRM

ROSLYNN R. MAUSKOPF
United States District Judge